

S.1301

Ninth Circuit Judgeship and Reorganization Act of 2005 (Introduced in Senate)

S 1301 IS

109th CONGRESS

1st Session

S. 1301

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 3 circuits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 23, 2005

Mr. ENSIGN (for himself, Mr. CRAIG, Mr. CRAPO, Mr. CORNYN, Mr. COBURN, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 3 circuits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Ninth Circuit Judgeship and Reorganization Act of 2005'.

SEC. 2. DEFINITIONS.

In this Act:

(1) **FORMER NINTH CIRCUIT**- The term `former ninth circuit' means the ninth judicial circuit of the United States, as in existence on the day before the effective date of this Act.

(2) NEW NINTH CIRCUIT- The term `new ninth circuit' means the ninth judicial circuit of the United States, established by the amendment made by section 3(2)(A).

(3) TWELFTH CIRCUIT- The term `twelfth circuit' means the twelfth judicial circuit of the United States established, by the amendment made by section 3(2)(B).

(4) THIRTEENTH CIRCUIT- The term `thirteenth circuit' means the thirteenth judicial circuit of the United States, established by the amendment made by section 3(2)(B).

SEC. 3. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended--

(1) in the matter preceding the table, by striking `thirteen' and inserting `fifteen'; and

(2) in the table--

(A) by striking the item relating to the ninth circuit and inserting the following:

`Ninth

California, Guam, Hawaii, Northern Marianas Islands.';

and

(B) by inserting after the item relating to the eleventh circuit the following:

`Twelfth

Arizona, Nevada, Idaho, Montana.

`Thirteenth

Alaska, Oregon, Washington.'.

SEC. 4. JUDGESHIPS.

(a) NEW JUDGESHIPS- The President shall appoint, by and with the advice and consent of the Senate, 5 additional circuit judges for the new ninth circuit court of appeals, whose official duty station shall be in California.

(b) TEMPORARY JUDGEShips-

(1) APPOINTMENT OF JUDGES- The President shall appoint, by and with the advice and consent of the Senate, 2 additional circuit judges for the former ninth circuit court of appeals, whose official duty stations shall be in California.

(2) EFFECT OF VACANCIES- The first 2 vacancies occurring on the new ninth circuit court of appeals 10 years or more after judges are first confirmed to fill both temporary circuit judgeships created by this subsection shall not be filled.

(c) EFFECTIVE DATE- This section shall take effect on the date of enactment of this Act.

SEC. 5. NUMBER OF CIRCUIT JUDGES.

The table contained in section 44(a) of title 28, United States Code, is amended--

(1) by striking the item relating to the ninth circuit and inserting the following:

19';

and

(2) by inserting after the item relating to the eleventh circuit the following:

8

6'.

SEC. 6. PLACES OF CIRCUIT COURT.

The table contained in section 48(a) of title 28, United States Code, is amended--

(1) by striking the item relating to the ninth circuit and inserting the following:

`Ninth

San Francisco, Los Angeles.';

and

(2) by inserting after the item relating to the eleventh circuit the following:

`Twelfth

Las Vegas, Phoenix.

`Thirteen

Portland, Seattle.'.

SEC. 7. ASSIGNMENT OF CIRCUIT JUDGES.

Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station on the day before the effective date of this Act--

- (1) is in California, Guam, Hawaii, or the Northern Marianas Islands shall be a circuit judge of the new ninth circuit as of such effective date;
- (2) is in Arizona, Nevada, Idaho, or Montana shall be a circuit judge of the twelfth circuit as of such effective date; and
- (3) is in Alaska, Oregon, or Washington shall be a circuit judge of the thirteenth circuit as of such effective date.

SEC. 8. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.

Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this Act may elect to be assigned to the new ninth circuit, the twelfth circuit, or the thirteenth circuit as of such effective date, and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 9. SENIORITY OF JUDGES.

The seniority of each judge--

- (1) who is assigned under section 7, or
- (2) who elects to be assigned under section 8,

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 10. APPLICATION TO CASES.

The following apply to any case in which, on the day before the effective date of this Act, an appeal or other proceeding has been filed with the former ninth circuit:

- (1) If the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this Act had not been enacted.
- (2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the

court to which the matter would have been submitted had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act, or submitted before the effective date of this Act and decided on or after such effective date as provided in paragraph (1), shall be treated in the same manner and with the same effect as though this Act had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this Act had not been enacted.

SEC. 11. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.

Section 291 of title 28, United States Code, is amended by adding at the end the following:

`(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit or the Thirteenth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit or Thirteenth Circuit.

`(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit or Thirteenth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit or Thirteenth Circuit.

`(e) The chief judge of the Thirteenth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit or the Twelfth Circuit, designate and assign temporarily any circuit judge of the Thirteenth Circuit to act as circuit judge in the Ninth Circuit or Twelfth Circuit.'.

SEC. 12. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.

Section 292 of title 28, United States Code, is amended by adding at the end the following:

`(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may in the public interest--

`(1) upon request by the chief judge of the Twelfth Circuit or Thirteenth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit or Thirteenth Circuit, or a division thereof, whenever the business of that court so requires; and

`(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit or Thirteenth Circuit.

`(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest--

`(1) upon request by the chief judge of the Ninth Circuit or Thirteenth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit or Thirteenth Circuit, or a division thereof whenever the business of that court so requires; and

`(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit or Thirteenth Circuit.

`(h) The chief judge of the United States Court of Appeals for the Thirteenth Circuit may in the public interest--

`(1) upon request by the chief judge of the Ninth Circuit or Twelfth Circuit, designate and assign 1 or more district judges within the Thirteenth Circuit to sit upon the Court of Appeals of the Ninth Circuit or Twelfth Circuit, or a division thereof whenever the business of that court so requires; and

`(2) designate and assign temporarily any district judge within the Thirteenth Circuit to hold a district court in any district within the Ninth Circuit or Twelfth Circuit.

`(i) Any designations or assignments under subsection (f), (g), or (h) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.'

SEC. 13. ADMINISTRATIVE COORDINATION.

Section 332 of title 28, United States Code, is amended by adding at the end the following:

`(i) Any 2 contiguous circuits among the Ninth Circuit, Twelfth Circuit, and Thirteenth Circuit may jointly carry out such administrative functions and activities as the judicial councils of the 2 circuits determine may benefit from coordination or consolidation.'

SEC. 14. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this Act may take such administrative action as may be required to carry out this Act and the amendments made by this Act. Such court shall cease to exist for administrative purposes 2 years after the date of enactment of this Act.

SEC. 15. EFFECTIVE DATE.

Except as provided in section 4(c), this Act and the amendments made by this Act shall take effect on the first October 1, that occurs on or after 9 months after the date on which all 5 judges described under section 4(a) have been appointed, by and with the advice and consent of the Senate.